

THE
American Doctrine of
Shipping Rights

An American Marine for American Commerce
Was the Policy of the Fathers

BY WILLIAM W. BATES

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READ "AMERICAN NAVIGATION"
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THE AMERICAN DOCTRINE OF SHIPPING-RIGHTS.

BY WILLIAM W. BATES,

Ex-United States Commissioner of Navigation.

IT IS the teaching of history that contact with the ocean has been highly influential in forming the character of nations—increasing their courage and love of freedom and developing the means of their wealth and power. This is why in every enlightened country the benefits of navigation are fully appreciated. Every people whose territory touches the ocean, its rivers and harbors furnishing sites for towns and cities and abodes of civilization, are naturally blessed in great degree. To other industries they may add shipbuilding, transportation and trade with foreign countries. If well-governed, they may grow rich and powerful on land and sea, and exert much influence on the progress of mankind. But native skill must be applied; shipping must be home-built and home-employed and commerce conducted by citizens, or its natural advantages will do the nation little good. Alien merchants using foreign shipping will not aid very much in developing industries away from home—they work for their own country and flag everywhere they go.

Only one of the larger nations of the earth—the United States of America—has failed for some time to prize and protect a large part of its navigation—that engaged in foreign trade. This part, by a mistaken policy, virtually thrust upon the government by a rival, has long been unprotected and consequently is now an almost vanished industry. It is hoped, however, that this policy will be soon corrected and that once more the American ship will win her way and enjoy her *rights*.

In February, 1904, a joint commission of Congress was appointed to investigate the situation of the American merchant marine during the recess and to prepare a bill to meet its demands in a constitutional manner. It was developed that

the view of the country favored the re-establishment of our early policy. This called for discriminating duties of *tonnage* and of *tariff*, as regulations of foreign commerce, the constitution not sanctioning the payment of “bounties” or “subsidies” to the marine in general. Contrary to expectation, the commission reported a “subvention” or subsidy bill, which, however, was not put upon passage, the report in its favor by a majority of the commission being weak and unsatisfactory. It is possible that this measure may be offered at the next session, but is by no means certain of enactment; for ample discussion must show that *its principle is false*, and that unless our present policy shall be *discontinued* there can be no hope for an American marine, no matter how much treasure may be squandered on the experiment.

ADVANTAGE OF SHIPPING POWER.

The relations of national advancement to navigation and commerce are naturally such, that the nations accomplishing their improvement and extension have ever developed a power of controlling the circumstances of others. An intelligent observation of Sir Walter Raleigh was grounded on this fact:

“Whosoever commands the sea commands the trade; whosoever commands the trade of the world commands the riches of the world, and consequently the world itself.”

The riches of the world do not all reside in traffic, though it is the idea of some commercial countries that, *for them*, the marts of trade are the indispensable possession. Raleigh's nation has paid great attention to his maxim. The mastery of navigation and the command of commerce have been uppermost in the mind

of its government in every movement made on land or sea for two hundred and fifty years. The possession of forty-three colonies or dependencies tells a long story of naval power, conquest and accumulation of wealth. Great Britain's command of the sea now begins with the control of shipbuilding; takes root with sure ascendancy in shipowning; branches out with supremacy in underwriting, and is perfected in power by mercantile advantage and the consequent financial rule of debtor nations: *those without shipping*. To her other instrumentalities of domination she adds a great navy.

THE WORK OF SHIP PROTECTION.

The basis for this commanding position—of “Ruler of the Seas”—was laid in a navigation act (1651–60) the most efficacious ever enforced. Its protection to ship employment was absolute. Says a British historian:

“The result of that act transcended the wildest dream of Lombard and Venetian avarice, or the grandest schemes of Spanish and Portuguese conquest. It not only secured to the people who enacted it the greatest share of the world's carrying trade, but the trade also knew its *master* and *followed* with becoming servility.”

Following is the principal section of the perfected act which gave England her start as the autocrat of commerce, virtually compelling other countries to follow her example in regard to ship protection:

BRITISH NAVIGATION ACT.

“And it is further enacted, etc., that no goods or commodities whatever of the growth, production or manufacture of Africa, Asia or America, or any part thereof, be imported into England, Ireland, or Wales, islands of Guernsey and Jersey, or town of Berwick-on-Tweed, in any other ship or ships, vessel or vessels whatever, but in such as do truly and without fraud, belong only to the people of England or Ireland, dominion of Wales, or

town of Berwick-on-Tweed, or of the lands, islands, plantations or territories in Asia, Africa or America, to his Majesty belonging, as the proprietors and right owners thereof, and whereof the master and three-fourths at least of the mariners are English, under the penalty of the forfeiture of all such goods and commodities, and of the ship or vessel in which they were imported, with all her guns, tackle, furniture and apparel.”

Thus, absolute prohibition protected British carrying with the greater part of the world, while, with the continent of Europe only, differential duties were applied. Necessarily, rival European nations regulated their commerce in view of the English system: prohibitively for their coastwise and colonial trades, as in Spain and Portugal, and discriminatively in duties for foreign traffic. England was not long in following up her navigation law with open warfare on the shipping of the Netherlands, then doing a large share of carriage for other countries. By breaking up these fixed relations, new ones favorable to English trade might be made. In this advancement the navy was the main support. In a few years' warfare the Dutch marine was destroyed. British statesmen said it was to break up a monopoly of navigation; historians say it was to establish one monopoly in place of another.

ANTI-MONOPOLY OF NAVIGATION.

When the United States of America came into the arena of ocean commerce a new problem confronted England. Under her laws, only her own flag could carry between any of the ports of America, or from them to her ports in Europe. American vessels under the stars and stripes would be excluded from these ports both in America and Europe, if no relaxation were made. This was done, but not by a statute for a number of years. A royal proclamation was issued annually, the ports in Great Britain were declared open, but those in the Provinces and the

West Indies were reported closed, to *vessels of the United States*. The governor of the East Indies, then having the power so to do, permitted American vessels to trade there under conditions such as other countries enjoyed.

For the better protection of her shipping, Great Britain refused outright to make any treaty of commerce and navigation with the United States, and to this day *she has made none* except the meager, time-limited convention of 1815, conditioned, at her instance, for the mutual suspension of discriminating duties in *direct trans-Atlantic* trade, securing thus a great advantage. The United States had no difficulty in getting desirable treaties with France, Holland and Sweden, and afterward with other countries, favorable to fair and equitable traffic.

The peculiar course of Great Britain caused a study of the subject of international navigation the world over, especially by American statesmen intent upon securing *the natural rights* of a young and independent maritime nation. What these rights were became matter for serious thought and considerate but determined action. Ambitious schemes, such as ultimately carrying and conducting the commerce of *the world*, were not entertained. Only fair and equitable commerce was wanted—no other appeared desirable.

TRANSPORTATION A PART OF COMMERCE.

Considering the question in its larger aspects, as did Benjamin Franklin and other of our early statesmen, transportation is a part of the commerce between two nations, and in direct trade plainly *belongs* to each country to do; but if one country has not the vessels, and the other has, then the whole transportation manifestly *belongs* to that one and cannot be justly claimed by any other.

While some nations unskilled in navigation have been content to have no shipping and only a *passive* commerce, others qualified to build and sail have been alert to the importance of an *active commerce*

carried on by their own vessels. A dependence on foreign shipping, and the payment of freight to vessels of other countries, *creates or increases* balances of commerce against a country. Alexander Hamilton, one of the greatest statesmen of our country, said: "To preserve the balance of trade [commerce] in favor of a nation ought to be a leading aim of its policy." Mr. Williamson, of North Carolina, said in 1790: "By permitting foreigners to carry our produce for us, in order to pay for the fine goods they furnish us, we have to raise more from the soil by *one-third* than if we carried it ourselves."

Foreign shipping dependence also encounters the disadvantages of foreign wars, scarcity of vessels, high rates of freight and dear insurance, without certainty of service at any cost; hence a national shipping is an *economic necessity* for a maritime people, and absolutely so, to maintain independence and perfect prosperity. Shipless nations often become a prey to the navigating class, as *trade* is always gained to alien carrying nations, while their profits enlarge and grow unfair. The shipless nation, too, is *always in debt, generally backward* and seldom prosperous.

THE TRUE THEORY OF COMMERCE.

Regarding the true theory of commerce, said Rufus King in 1818:

"As all nations have *equal rights*, and each may claim *equal advantages* in its intercourse with others, the true theory of international commerce is one of *equality* and *reciprocal benefits*. This gives to skill and to capital their just and natural advantages; any other scheme is merely artificial; and so far as it aims at advantages over those who adhere to the open system, it aims at profit at the expense of natural justice."

The British system had the fault thus described. The colonists were treated as subordinate to their fellow-subjects; their industries and the use of their vessels

being placed under inferior regulations. It was this denial of equality that really caused the revolution of 1776. It was natural, therefore, that an American system of commerce should look to *protection* of some kind, that should even up disadvantages in the *footing of vessels* and conduce to the conduct of "fair commerce" and a just sharing of transportation with the countries with whom we traded. The first two commercial treaties made after the revolution exhibit the care of our early statesmen in this regard. The *right* to protect against inequalities of *footing* in navigation was reserved in the preambles to these treaties both proclaimed in 1783. We quote from that of the Netherlands.

The contracting parties:

"Desiring to ascertain in a permanent and equitable manner, the rules to be observed relative to the commerce and correspondence which they intend to establish between their respective states, countries, and inhabitants have judged that the said end cannot be better obtained than by establishing the most perfect *equality* and reciprocity for the basis of their agreements, and by avoiding all those burdensome preferences which are usually the sources of debate, embarrassment, and discontent; by leaving also each party *at liberty* to make, respecting commerce and navigation, such *ulterior regulations* as it shall find most convenient to itself, and by founding the advantages of commerce solely upon *reciprocal utility* and the just rules of free intercourse; reserving withal to each party the liberty of admitting at its pleasure other nations to a participation of the same advantages."

OUR CONTENTION FOR FAIR WEST INDIA COMMERCE.

After the above-mentioned treaties were made, nearly all our states enacted regulations of commerce—described as "discriminating duties"—for the protection of their carrying trade, being free

so to do. When the constitution was formed a *compact* was necessarily entered into, that the duty and power of such protection should be taken over by the Federal government. That is the significance of clause 3 of section 8 of article I. of the Constitution, providing for the regulation of foreign trade. In conformity with the compact and under the power granted, the first Congress, in 1789, took up its duty towards shipping, and in a short time an American marine was under way encouraged and protected in its *employment*. Great Britain was alone in her opposition and antagonism. Herself the best protected shipping nation on earth, a strong believer in her right to keep down rivalry and to monopolize, if she could, the commerce and carriage of the world, she could not tolerate "fair commerce" with a former rebel colony. For twenty-five years the British ministry watched and worked to coerce the American government into an abandonment of ship protection in the trade between the two countries. Finally this was effected after the close of the war of 1812, the West Indies remaining closed. The alternative was to continue the war. Giving way to Great Britain in 1815 initiated a change of system that should never have been made. A most *unfair* commerce resulted from it. British shipping brought out such goods as our market would accept; then they took cargo for the West Indies; there they loaded for the United States; discharged cargo here, and loading again they sailed homeward bound, having paid no "discriminating duties" for the protection of "Yankee" ships. American vessels could load and sail for a British European port, take in *ballast* and return home. They could not then load and sail to a British West India port under penalty of confiscation of hull and cargo. They paid no discriminating duties, except for lights in the British ports in Europe, but neither could they get the carriage of foreign-owned cargoes with their discriminating duties off; the British merchant freighted

the ship of his own flag, for such were the ethics of his philosophy, and the disregard that he paid to the principle of *reciprocal* benefits. Entitled to *half* the transportation of the commerce with Great Britain, the United States could get but *one-quarter*. Entitled to *half* the transportation of the commerce with the West Indies, they were refused *any* of it.

Finding how the convention operated, Congress was not long in resolving to have the ports of the West Indies opened, or the disadvantage of the convention reduced to a minimum. In 1819 it would terminate, but, having other negotiations pending, England had it in her power to compel an extension of time, and this she did for ten years in 1818. In 1818, Congress passed an act to the effect that American ports were closed to *all vessels* coming from ports which were closed to vessels of the United States. In the Senate the vote was 31 to 2, and in the House, 123 to 16. The British policy was "exclusively directed against us," the vessels of other countries being indulged in a free intercourse. In this wrongful policy Britain stood alone, "American vessels being admitted into the French, Spanish, Dutch and Swedish colonies."

NATURAL RIGHTS SHOULD BE PROTECTED.

James Barbour, of Virginia, in an able speech said:

"Vain, foolish, your resolutions to build ships, unless you *protect* your navigation. It is not to the superior fixtures of your vessels, or the ampleness of their supplies, you are to look for victory, but to the number and experience of your sailors. If you suffer the power who looks with jealousy on your rising commerce and with envy on the glory of your navy, to exclude you from the participation of those advantages which *of right*, as being derived from *nature*, BELONG TO YOU, abandon all thoughts of an efficient marine, and withdraw from the ocean."

It was estimated that 138,000 tons of shipping, manned by 6,000 seamen, sailed annually from our ports to the British West Indies with exports to the value of \$6,000,000—a commerce in which we had no participation whatever. Mr. Barbour thus illustrated the case:

"A British ship arrives in the United States direct from Great Britain, with a cargo, unloads in one of our ports, takes in a cargo of lumber, goes to the West Indies, delivers it, and finding freight scarce, she sails to New Orleans, procures a load of tobacco, cotton, etc., and proceeds to Great Britain; here two or three of the freights *belong of right* to the shipping of America, as being *the products* of America. Yet British ships, from the policy complained of, monopolize the whole. An American vessel going from a Northern or an Eastern port with a view to take a cargo for Europe, goes *in ballast* to New Orleans. Even from the colonies in North America vessels are daily entering our ports laden with plaster, fish and the products of their colonies; these are commuted in some of our ports for such cargoes as are wanted in the West Indies, whither they sell or exchange their cargo, and procure a freight in the produce of the islands. Again, British ships engaged in the West India trade, frequently leave home with cargoes of little value, such as earthenware, coal, salt, etc., come to the United States, procure cargoes for the West Indies, and return home freighted with the productions of the islands; while the American trade is limited to a *direct* trade only with the possessions of Great Britain in Europe. *They return generally in ballast*" [since the convention of 1815].

THE VESSEL'S RIGHT TO CARRY THE CARGO.

It was not the "colonial system" to which Americans objected, but a new development of the monopolistic policy. On this point Rufus King, a member of the constitutional convention, said:

"Our commercial system is an open one—our ports and our commerce are free to all—we neither possess, nor desire to possess, colonies; nor do we object that others should possess them, unless thereby the general commerce of the world be so abridged that we are restrained in our intercourse with foreign commerce wanting our supplies, and furnishing in return those which we need.

"But it is not to the colonial system, but to a *new principle*, which in modern times has been incorporated with those of the navigation act of Great Britain, that we now object. According to this act no direct trade or intercourse can be carried on between a colony and a foreign country; but by the 'free port bill' passed in the present reign, the English contraband trade, which had long been pursued, in violation of Spanish laws, between English and Spanish colonies, was sanctioned and regulated by an act of Parliament; and, since the independence of the United States, England has passed laws opening an intercourse and trade between her West India colonies and the United States, and excluding the shipping of the United States, has confined the same to English ships and seamen; departing by this law not only from the principles of the navigation act, which she was at liberty to do, by opening a *direct* intercourse between the colonies and a foreign country, but controlling, *which she had no authority to do*, the reciprocal rights of the United States to employ their own vessels to carry it on.

"Colonies being parts of the nation, are subjected to its regulations; but when an intercourse and trade are opened between colonies and a foreign country, the foreign country becomes a *party*, and has a reciprocal claim to employ its own vessels equally in the intercourse and trade with such colony, as with any other part of the nation to which they belong. Governments owe it to the trust confided to them, carefully to watch over, and by all suitable means to promote, the general welfare; and while on account of a small

or doubtful inconvenience they will not disturb a beneficial intercourse between their people and a foreign country, they ought not to omit the interposition of their corrective authority, whenever an important public interest is evaded, or the national reputation affected."

RESULTS OF OUR CONTENTION.

As the islands had to have our supplies, we did not lose the trade, which, under their regulations, was carried on by our vessels through neutral ports, the British carrying between these and their own. There were thus two freights in place of one, much to the cost of the islanders. British commerce, and the subjects of the King, suffered under this state of things for twelve years before his Majesty would recognize the principle that American vessels had a *right* to carry *export* cargoes to any extent. In 1830 the drastic course pursued opened the ports which had been closed in 1783. The ports of the world are open to American shipping to-day, but *ninety* per cent. of them might as well be closed to our vessels as to have to run them under a policy such as now virtually excludes them on peril of ruin to owners. And we are told if we undertake to change this policy, which but for Great Britain we would never have had, there will be dire retaliation leveled at the interests of American farmers. Sentiment so unworthy did not move the patriotic legislators in 1818, led by a farmer of Virginia, Hon. James Barbour. About this point he said:

"The exports from this country to the dependencies in question may be estimated at \$6,000,000 and the question to be discussed is, what will be the influence of this measure upon the price of the article thus exported? If it be necessary to admit that Great Britain can do and will do without them, then it would be in vain to disguise the fact that the price of these articles would diminish, and in so far the value be impaired and by consequence the agricultural interest injured. But if it were revealed from Heaven that

this would be the consequence, still he hoped that agriculturists were prepared, when a just regard to the interests and to the character of their country required it, to make the sacrifice which the emergency called for. He represented farmers and agriculturists; his interest was like theirs, and he, therefore, presumed he spoke their sentiments, when he proclaimed his readiness to look across any sacrifice of their interest, when the welfare and dignity of the whole people of the United States demanded it."

ENUMERATION OF SHIPPING RIGHTS.

Thus, as we have seen, and as the writer has elsewhere shown from the proceedings of Congress,* the American doctrine in relation to the foreign carrying trade is this: American shipping has the *natural right* and is entitled,

1. To carry American exports to any country whose *ports are open* to them.

2. To carry American commerce between the states and other countries, their vessels mutually participating in the carriage of imports and exports, to the extent of *one-half*.

3. To carry *all* the commerce between the United States and another country, *if it has no vessels* with which to do its share of carriage.

4. *To carry all American domestic commerce*—coasting, lake and river.

5. The government of the United States has the *natural right*, and is entitled to regulate its foreign trade in a manner to secure and protect all American shipping rights against the adverse footing, or protective policies, of foreign countries.

6. The government of the United States is under a constitutional *compact* with the maritime states to perform its duty in the enactment of proper laws for the encouragement and protection of American navigation and to see that engagements with foreign nations involve

no sacrifice of the shipping interest of the United States.

THE PROBABLE ACTION OF CONGRESS.

The foregoing principles should and will undoubtedly prevail in any measure that Congress will enact for the recovery of the foreign carrying trade, which is now done to the extent of *ninety-two* per cent. by the vessels of foreign countries. Of the annual importations, about *fifty-four* per cent. arrive by vessels not belonging to the countries of production, *i. e.*, by indirect carriage. This is in consequence of the act of Congress, of 1828, opening our ports to vessels of all countries, with cargoes the production of any or every country, on the same footing at the customs as our own ships, whenever any foreign country would reciprocate, though reciprocation was of no real value. At the time this act was passed, American ships competed in British ports with British ships; in French ports with French ships; in Chinese ports with Chinese vessels, and so on, for freight to the United States. Now, in these, and in all ports whatever, American vessels have to compete with the vessels of *all nations*—a manifold competition, say, of *tenfold* the extent that is prudent or necessary. It is this excess of competition that the forthcoming congressional legislation should seek to set aside. The conventions standing in the way of this course may all be terminated by giving the notice of one year required, if one country or the other came to believe that the convention operated unfairly and was detrimental. It has been to the interest of many countries to let these conventions stand, and several have devised and applied *other protections*—to the damage of the United States. The act should extend far enough to nullify these; and it may follow that other nations will have to adopt the principles of our act, as this article has set them out.

It is not the intention and would not seem to be good policy to lay any extra burdens on *direct trade and transporta-*

* See *American Navigation*, 1902. Houghton, Mifflin & Company, Boston and New York.

tion, unless foreign countries take that course, which will not probably happen. Acknowledging the right of all nations to carry their own commerce and standing for the freedom of international intercourse, the United States seeks only justice for her own people in respect to navigation. They are willing to have a fair competition, for instance, between their own vessels and those of Great Britain for the commerce between the two countries and their dependencies, but not for the commerce of the United States with France, Germany, Brazil, China, etc. Moreover, students of the subject have satisfied themselves that there cannot be a *fair* competition with *unequal footing*, and that American vessels cannot survive with *less protection* than others. It is taken as proved in our experience that Great Britain has *advantages* for navigation *in excess* of all other nations, and that the United States have disadvantages beyond all others. If this were not so, British shipping would not be so redundant as it is, nor American shipping so insufficient. Congress should therefore look mainly to a degree of handicapping requisite to equalize conditions for competition with British vessels. The situation was similar in 1789. Our regulations made then and afterward, judging

from history, held the scales of competition with tolerable equipoise; that was the reason the British were discontented and endeavored to get our policy changed—protection removed—as they seemed to prefer *advantage* to *equality*. This course might be expected of a rival who believes it is for *him* to carry the commerce of “the world.”

The British have no convention with the United States for reciprocity under the act of 1828. Their act of 1849 met the terms of that act. Though they have prospered greatly and much more than others, from its extravagant liberality, they have never left a stone unturned to find and apply advantages, *fair and unfair*, to accomplish the monopoly of our foreign transportation. Great Britain is now the best protected of all nations, as the United States is the least, as to foreign trade, yet it is feared by some that she will “retaliate” if we compel an equalization of advantages. For this there would be no moral justification, and therefore no such action. A nation that is just will not object to American ship-protection at the present day, especially as nothing could be accomplished by exciting the resentment of the American Republic. WILLIAM W. BATES.

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